

THE DISTRICT COURT OF GUAM

CLIFFORD HACKETT,

Plaintiff,

VS.

BARRIGADA WENDY'S,

Defendant.

CIVIL CASE NO. 20-00021

ORDER

Before the court is the U.S. Magistrate Judge's Report and Recommendation to Dismiss Complaint with Leave to Amend and to Deny Application to Waive Fees, file by Fax and to Serve Opposing Party by Fax or Email. ECF No. 2. For the reasons stated herein, the court

ADOPTS IN PART the Report and Recommendation. The Application to Proceed without Prepayment of Fees is **DENIED**. The above-captioned matter is **DISMISSED** with prejudice.

The U.S. Magistrate Judge recommends the dismissal of the case for the following reasons. First, the Complaint lacks factual allegations to establish that Plaintiff has standing to bring a claim under the Americans with Disabilities Act. R. & R. at 3, ECF No. 2. Second, the Complaint fails to allege that Plaintiff is a person with a disability. *Id.* at 4. Thus, the U.S. Magistrate Judge recommends dismissal of the Complaint with leave to amend.

1 The court finds that granting leave to amend would be futile. The Report and
2 Recommendation was mailed to Plaintiff. Said mail was returned as undeliverable. *See* ECF No.
3 3. Plaintiff provided the following mailing address, “General Delivery, Barrigada, GU, 96913.”
4 Compl. at 1, ECF No. 1. Plaintiff has not provided any other contact information, and this court
5 has no means to serve him the Report and Recommendation.

6 The court has the inherent power to *sua sponte* dismiss a case for lack of prosecution. *Ash*
7 *v. Cvetkov*, 739 F.2d 493, 493 (9th Cir. 1984). “[T]he district court must weigh the court’s need
8 to manage its docket, the public interest in expeditious resolution of litigation, and the risk of
9 prejudice to the defendants against the policy favoring disposition of cases on their merits, and
10 the availability of less drastic sanctions.” *Id.* (citations omitted). Here, the case is unable to
11 proceed because Plaintiff cannot be contacted. Had he provided the correct mailing address, the
12 Report and Recommendation would have been delivered to him, and he would have had the
13 opportunity to amend his Complaint. There are no other less drastic sanctions. Further, the
14 dismissal of the Complaint does not prejudice Defendant, as Defendant has not even been served
15 yet. Accordingly, this case is hereby **DISMISSED** with prejudice.

16 **SO ORDERED.**



17 /s/ Frances M. Tydingco-Gatewood
18 Chief Judge
19 Dated: Jan 29, 2021